

EXHIBIT A

ORIGINAL

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 and CLASS MEMBERS

FILED
 LOS ANGELES SUPERIOR COURT

JAN 30 2007

John A. Clark, Executive Officer/Clerk
 By *[Signature]*, Deputy

Case assigned
 to Judge

Victoria Chamen

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

D-321
 BC365524

SHONE D. MCEWEN, individually, and on
 behalf of other members of the general public
 similarly situated,

Plaintiff,

vs.

THE PEP BOYS MANNY, MOE & JACK
 OF CALIFORNIA, a California corporation;
 THE PEP BOYS MANNY, MOE & JACK, a
 Pennsylvania corporation; and DOES 1
 through 10, inclusive,

Defendants.

Case Number:

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF CALIFORNIA LABOR CODE §§510 and 1198 (Unpaid Overtime);
2. VIOLATION OF CALIFORNIA LABOR CODE §§ 201 AND 202 (Wages Not Paid Upon Termination);
3. VIOLATION OF CALIFORNIA LABOR CODE § 227.3 (Unlawful Vacation Policy);
4. VIOLATION OF CALIFORNIA LABOR CODE § 226(a) (Improper Wage Statements);
5. VIOLATION OF CALIFORNIA LABOR CODE § 226.7 (Missed Rest Periods);
6. VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7 AND 512 (Missed Meal Periods);
7. VIOLATION OF CALIFORNIA LABOR CODE §§ 221, 223, AND 224 (Repayment of Wages);
8. VIOLATION OF CALIFORNIA LABOR CODE § 2802 (Indemnification for Employee Expenditures); AND
9. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, ET SEQ. (Unlawful Business Practices).

Jury Trial Demanded

CIT/CASE: BC365524 LEX/DEF:
 RECEIPT #: CCH65943027
 DATE PAID: 01/30/07 03:27:14 PM
 PAYMENT: \$320.00
 RECEIVED:
 CHECK: 320.00
 CASH:
 CHANGE:
 CARD:

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1 Plaintiff SHONE D. MCEWEN, individually and on behalf of all other members of the
 2 public similarly situated, hereby complains of Defendants THE PEP BOYS MANNY, MOE &
 3 JACK OF CALIFORNIA and THE PEP BOYS MANNY, MOE & JACK, and alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This class action is brought pursuant to California Code of Civil Procedure section
 6 382. The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdictional
 7 limits of the Superior Court and will be established according to proof at trial.

8 2. This Court has jurisdiction over this action pursuant to California Constitution
 9 Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except
 10 those given by statute to other courts." The statutes under which this action is brought do not
 11 specify any other basis for jurisdiction.

12 3. This Court has jurisdiction over Defendants because Defendant THE PEP BOYS
 13 MANNY, MOE & JACK OF CALIFORNIA is a corporation organized and existing under the
 14 laws of the state of California, and Defendants have sufficient minimum contacts in California,
 15 and otherwise intentionally availed themselves of the California market so as to render exercise of
 16 jurisdiction over them by the California courts consistent with traditional notions of fair play and
 17 substantial justice.

18 4. Venue is proper in this Court pursuant to Code of Civil Procedure section 395.5
 19 because, upon information and belief, Defendants transacts business or have offices and stores in
 20 this county, and the wrongful acts giving rise to Plaintiff's claims occurred, in part, in this county.

21 **PARTIES**

22 5. Plaintiff SHONE D. MCEWEN ("Plaintiff") is an individual residing in Los
 23 Angeles, California.

24 6. Defendant THE PEP BOYS MANNY, MOE & JACK OF CALIFORNIA ("PEP
 25 BOYS CA") is, and at all times mentioned herein was, a corporation organized and existing under
 26 the laws of the State of California, with stores and offices in Los Angeles, California. PEP BOYS
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1 CA is an employer whose employees are engaged throughout this county, and the state of
2 California.

3 7. Defendant THE PEP BOYS MANNY, MOE & JACK ("PEP BOYS PA") is, and at
4 all times mentioned herein was, a corporation organized and existing under the laws of the State of
5 Pennsylvania. Plaintiff is informed and believes that PEP BOYS PA is an employer whose
6 employees are engaged throughout this county, and the state of California.

7 8. Plaintiff is informed and believes that PEP BOYS CA and PEP BOYS PA are
8 affiliated companies (PEP BOYS CA and PEP BOYS PA collectively "PEP BOYS" or
9 "Defendants").

10 9. Plaintiff is ignorant of the true name or capacity of each defendant sued herein
11 under the fictitious names DOES 1 through 10, but prays for leave to amend and serve each such
12 fictitiously named defendant pursuant to California Code of Civil Procedure section 474, once
13 his/her name and capacity becomes known and ascertained. Plaintiff is informed and believes that
14 each said defendant is in some manner intentionally, negligently, or otherwise responsible for the
15 acts, occurrences and transactions alleged herein, and the intentional and/or negligent conduct
16 and/or fault of each fictitiously named defendant in some manner contributed to the damages
17 complained of herein.

18 10. Plaintiff is informed and believes that each and every act and omission alleged
19 herein was performed by or attributable to defendant, and that each fictitiously named defendant
20 acted as the agent for the other, with legal authority to act on the other's behalf, in accordance with
21 and in representation of the official policy of defendant. Furthermore, at all times herein
22 mentioned, defendants aided and abetted the acts and omissions of each other in proximately
23 causing the damages herein alleged.

24 11. Each reference in this Complaint to defendant, defendants, or a specifically named
25 defendant, also refers to all defendants sued under fictitious names.

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CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action on his own behalf and on behalf of all other persons similarly situated, and therefore seeks class certification under California Code of Civil Procedure section 382.

13. The proposed subclasses consist of and are defined as:

All "non-exempt" or hourly persons employed by Defendants in the State of California at any time during the period commencing four years prior to the filing of this Complaint to final judgment.

14. There is a well-defined community of interest in the litigation and the class is easily ascertainable:

a) Numerosity. The class members, and each subclass, if any, are so numerous that joinder of all class members would be unfeasible and not practicable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than 100 individuals, and the identity of such members is readily ascertainable by inspection of Defendants' employment records.

b) Typicality. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

c) Adequacy. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action, will continue to incur, costs and attorney's fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

1 d) Superiority. The nature of this action makes the use of class action
 2 adjudication superior to other methods. This case involves a corporate employer (Defendant) and
 3 a large number of individual employees (Plaintiff and class members) with many relatively small
 4 claims with common issues of law and fact. If each employee were required to file an individual
 5 lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage, as they
 6 would be able to exploit and overwhelm the limited resources of each individual class member
 7 with their vastly superior financial and legal resources. Requiring each class member to pursue an
 8 individual remedy would also discourage the assertion of lawful claims by employees who would
 9 be disinclined to pursue an action against their present and/or former employer for a justifiable
 10 fear of retaliation and permanent damage to their careers, either at present and/or at subsequent
 11 employment. Proof of a common business practice or factual pattern of which the named Plaintiff
 12 experienced, and that is representative of the class mentioned herein, will establish the right of
 13 each class member to recovery on the Causes of Action alleged herein. Class action will achieve
 14 economies of time, effort, and expense as compared with separate lawsuits, and avoid inconsistent
 15 outcomes because the same issues can be adjudicated in the same manner for the entire class.

16 e) Public Policy Consideration. Employers of the state violate employment and
 17 labor laws every day. Current employees are often afraid to assert their rights out of fear of direct
 18 or indirect retaliation. Former employees are fearful of bringing actions because they believe their
 19 former employers can damage their future endeavors through negative references and other means.
 20 Class actions provide the class members who are not named in the complaint with a type of
 21 anonymity that allows for the vindication of their rights at the same time as their privacy is
 22 protected.

23 15. There are common questions of law and fact as to the class, and each subclass, if
 24 any, that predominate over questions affecting only individual members, including, but not limited
 25 to:

26 a) Whether Defendants' failure to pay wages, without abatement or reduction, in
 27 accordance with the California Labor Code, was willful;
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1 b) Whether Defendants failed to pay Plaintiff and class members applicable
2 overtime rates of pay in accordance with applicable California Labor Code provisions;

3 c) Whether Defendants properly complied with wage reporting requirements as
4 required by the California Labor Code, including but not limited to Labor Code section 226;

5 d) Whether Defendants unlawfully caused Plaintiff and class members to forfeit
6 vacation pay in violation of application California Labor Code provisions, including but not
7 limited to Labor Code section 227.3;

8 e) Whether Defendants deprived Plaintiff and class members of rest periods
9 and/or required Plaintiff and class members to work during rest periods without compensation;

10 f) Whether Defendants deprived Plaintiff and class members of meal periods
11 and/or required Plaintiff and class members to work during meal periods without compensation;

12 g) Whether Defendants unlawfully collected or received from Plaintiff and class
13 members any part of wages previously paid to Plaintiff and class members;

14 h) Whether Defendants failed to provide Plaintiff and class members
15 maintenance allowance or reimbursement for costs incurred in the maintenance of uniforms.

16 i) Whether Defendants engaged in unfair business practices in violation of
17 Business & Professions Code section 17200, *et seq.*;

18 j) Whether Defendants' conduct was willful;

19 k) The appropriate amount of compensatory damages resulting from
20 Defendants' violations of law;

21 l) The appropriate amount of monetary penalties resulting from Defendants'
22 violations of law; and

23 m) Whether Defendants are guilty of oppression, fraud, or malice, and should be
24 punished for the sake of example, to deter others from engaging in similar misconduct.

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1 **FACTUAL ALLEGATIONS**

2 16. Upon information and belief, PEP BOYS is an automotive retail and service chain,
3 engaged in the retail sale of automotive parts, tires and accessories, automotive repairs and
4 maintenance, and the installation of parts.

5 17. On or about March 2001, PEP BOYS hired Plaintiff to work in its North
6 Hollywood store location, in the capacity of a non-exempt Customer Service/Retail Sales
7 Representative, and Plaintiff remained under PEP BOYS' employ until on or about August 2006.

8 18. During the term of his employment with PEP BOYS, Plaintiff worked in non-
9 exempt, hourly positions, in the capacity of Customer Service Representative, Driver, and
10 Commercial Sales Manager.

11 19. At all times mentioned herein, PEP BOYS employed Plaintiff and other persons in
12 the capacity of Customer Service/Retail Sales Representative, Driver, and Commercial Sales
13 Manager, and other similar non-exempt, hourly positions.

14 20. Plaintiff is informed and believes that PEP BOYS continues to employ Customer
15 Service/Retail Sales Representatives, Drivers, and Commercial Sales Managers, and others in
16 similar positions.

17 21. PEP BOYS failed to pay all earned and unpaid wages to Plaintiff and class
18 members either immediately at the time of discharge or within seventy-two (72) hours thereafter.

19 22. PEP BOYS caused or required Plaintiff and class members to miss their meal and
20 rest periods, and failed to compensate Plaintiff and class members an additional hour of pay for
21 each day a meal or rest period was missed.

22 **FIRST CAUSE OF ACTION**

23 Violation of California Labor Code §§ 510 and 1198

24 (Against all Defendants)

25 23. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
26 material allegations set out in paragraphs 1 through 22.

1 24. California Labor Code section 1198 and the applicable Industrial Welfare
2 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
3 compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate
4 of pay, depending on the number of hours worked by the person on a daily or weekly basis.

5 25. Specifically, the applicable IWC Wage Order provides that PEP BOYS is and was
6 required to pay Plaintiff and class members employed by PEP BOYS, and working more than
7 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-
8 half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
9 workweek.

10 26. The applicable IWC Wage Order further provides that PEP BOYS is and was
11 required to pay Plaintiff and class members employed by PEP BOYS, and working more than
12 twelve (12) hours in a day, overtime compensation at a rate of two times his or her regular rate of
13 pay.

14 27. California Labor Code section 510 codifies the right to overtime compensation at
15 one-and-one-half the regular hourly rate for hours worked in excess of eight (8) hours in a day or
16 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
17 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
18 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

19 28. During the relevant time period, Plaintiff and class members consistently worked in
20 excess of eight (8) hours in a day or forty (40) hours in a workweek.

21 29. During the relevant time period, PEP BOYS failed to properly pay overtime wages
22 owed to Plaintiff and class members.

23 30. Among other things, PEP BOYS unlawfully paid Plaintiff and class members a rate
24 of compensation for overtime work that was less than the rate of pay mandated by the applicable
25 Wage Orders, and California Labor Code section 510.

1 31. Defendants' failure to pay Plaintiff and other class members overtime
2 compensation, as required by California laws, violates the provisions of California Labor Code
3 sections 510 and 1198, and is therefore unlawful.

4 32. Pursuant to California Labor Code section 1194, Plaintiff and class members are
5 entitled to recover their unpaid overtime compensation, as well as interest, costs and attorney's
6 fees.

7 33. Plaintiff is informed and believes that Defendants are guilty of oppression, fraud, or
8 malice, thereby warranting an award of punitive damages against Defendants for the sake of
9 example, and to punish Defendants and deter others from engaging in similar misconduct.

10 SECOND CAUSE OF ACTION

11 Violation of California Labor Code §§ 201 and 202

12 (Against all Defendants)

13 34. Plaintiff incorporates by reference the allegations set out in paragraphs 1 through
14 33 above, as though fully stated herein.

15 35. California Labor Code section 218 states that nothing in Article 1 of the Labor
16 Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due him
17 [or her] under this article."

18 36. California Labor Code sections 201 and 202 provide that if an employer discharges
19 an employee, the wages earned and unpaid at the time of discharge are due and payable
20 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
21 shall become due and payable not later than seventy-two (72) hours thereafter, unless the
22 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which
23 case the employee is entitled to his or her wages at the time of quitting.

24 37. After Plaintiff and class members ceased to be in PEP BOYS' employ, PEP BOYS
25 failed to pay earned and unpaid wages to Plaintiff and those class members either immediately at
26 the time of discharge or within seventy-two (72) hours thereafter.

1 38. Specifically, PEP BOYS failed to pay Plaintiff and class members vacation time
2 that was earned, vested, but not taken, either immediately at the time of discharge or within
3 seventy-two (72) hours thereafter.

4 39. As a result of its failure to pay, PEP BOYS violated California Labor Code sections
5 201 and 202, causing damage and injury to Plaintiff and class members.

6 40. California Labor Code section 203 provides that if an employer wilfully fails to pay
7 wages owed in accordance with California Labor Code sections 201 and 202, then the wages of
8 the employee shall continue as penalty from the due date and remain thereon at the same rate until
9 the employee is paid or until action is commenced, but for a period not greater than thirty (30)
10 days.

11 41. Accordingly, pursuant to California Labor Code section 203 Plaintiff and class
12 members are entitled to recover from PEP BOYS the statutory penalty for each day for which they
13 were not paid their regular hourly rate of pay, up to thirty (30) days.

14 42. Plaintiff is informed and believes that Defendants are guilty of oppression, fraud, or
15 malice, thereby warranting an award of punitive damages against Defendants for the sake of
16 example, and to punish Defendants and deter others from engaging in similar misconduct.

17 THIRD CAUSE OF ACTION

18 Violation of California Labor Code § 227.3

19 (Against Defendant and DOES 1 through 10)

20 43. Plaintiff incorporates by reference the allegations set out in paragraphs 1 through
21 42 above, as though fully stated herein.

22 44. California Labor Code section 218 states that nothing in Article 1 of the Labor
23 Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due him
24 [or her] under this article."

25 45. California Labor Code section 227.3 provides, in part, ""whenever a contract of
26 employment or employer policy provides for paid vacations, and an employee is terminated
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1 without having taken off his vested vacation time, all vested vacation shall be paid to him as
2 wages at his final rate...."

3 46. California Labor Code section 227.3 further provides, in part, that "an...employer
4 policy shall not provide for forfeiture of vested vacation time upon termination."

5 47. During the relevant time period, PEP BOYS implemented a vacation policy that
6 unlawfully caused Plaintiff and class members to forfeit earned and vested vacation time.

7 48. As a result of its unlawful vacation policy, PEP BOYS violated California Labor
8 Code section 227.3, causing damage and injury to Plaintiff and class members.

9 49. Therefore, Plaintiff and class members are entitled to recover all unpaid wages, and
10 such general and special damages as may be appropriate, as well as interest on all due and unpaid
11 wages pursuant to California Labor Code section 218.6, accrued from the date the wages were due
12 and payable, at the rate of interest specified in California Civil Code section 3289(b). Plaintiff and
13 class members are also entitled to the cost of suit incurred herein; and for such other and further
14 relief as the Court may deem appropriate.

15 50. Plaintiff and class members are also entitled to equitable injunctive relief to ensure
16 compliance with this section, pursuant to California Labor Code section 227.3.

17 51. Plaintiff is informed and believes that Defendants are guilty of oppression, fraud, or
18 malice, thereby warranting an award of punitive damages against Defendants for the sake of
19 example, and to punish Defendants and deter others from engaging in similar misconduct.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of California Labor Code § 226(a)**

22 **(Against all Defendants)**

23 52. Plaintiff incorporates by reference the allegations set out in paragraphs 1 through
24 51 above, as though fully stated herein.

25 53. California Labor Code section 218 states that nothing in Article 1 of the Labor
26 Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due him
27 [or her] under this article."
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1 62. California Labor Code section 218 states that nothing in Article 1 of the Labor
2 Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due him
3 [or her] under this article."

4 63. California Labor Code section 226.7(a) provides: "no employer shall require any
5 employee to work during any...rest period mandated by an applicable order of the California
6 Industrial Welfare Commission."

7 64. California Labor Code section 226.7(a) and the applicable IWC Wage Order
8 provide, in part, that employees cannot be required to work in excess of four hours without
9 receiving a ten-minute rest period. The applicable IWC Wage Order further provides, in part, that
10 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
11 practicable shall be in the middle of each work period."

12 65. During the relevant time period, PEP BOYS violated applicable orders of the
13 California Industrial Wage Commission, and California Labor Code section 226.7(a) by requiring
14 Plaintiff and class members to work during rest periods, but failing to compensate them for the
15 work they performed during that time.

16 66. Accordingly, pursuant to California Labor Code section 226.7(b), Plaintiff and
17 class members are entitled to recover from Defendants one (1) additional hour of pay at the
18 employees' regular rate of compensation for each work day that a rest period was not provided.

19 67. Furthermore, Plaintiff and class members are each entitled to recover from
20 Defendants one (1) hour compensation per missed rest period as premium pay for wages, and not
21 as a penalty.

22 68. Plaintiff is informed and believes that Defendants are guilty of oppression, fraud, or
23 malice, thereby warranting an award of punitive damages against Defendants for the sake of
24 example, and to punish Defendants and deter others from engaging in similar misconduct.

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1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7 and 512**

3 **(Against all Defendants)**

4 69. Plaintiff incorporates by reference the allegations set out in paragraphs 1 through
5 68 above, as though fully stated herein.

6 70. California Labor Code section 218 states that nothing in Article I of the Labor
7 Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due him
8 [or her] under this article."

9 71. California Labor Code section 226.7(a) provides: "no employer shall require any
10 employee to work during any meal...period mandated by an applicable order of the California
11 Industrial Welfare Commission."

12 72. California Labor Code section 512(a) provides that an employer may not employ
13 an employee for a work period of more than five (5) hours per day without providing the
14 employee a meal period of not less than thirty (30) minutes, except that if the employee's total
15 work period per day is not more than six (6) hours then the meal period may be waived by mutual
16 consent of both the employer and the employee.

17 73. California Labor Code section 512(a) further provides that an employer may not
18 employ an employee for a work period of more than ten (10) hours per day without providing the
19 employee a second meal period of not less than thirty (30) minutes, except that if the total hours
20 worked by the employee is no more than twelve (12) hours, then the second meal period may be
21 waived by mutual consent of the employer and the employee if and only if the first meal period
22 was not waived.

23 74. During the relevant time period, Plaintiff and class members scheduled to work in
24 excess of six (6) hours, in fact were required to work for periods longer than five hours, without a
25 mandated meal period of not less than thirty (30) minutes.

26 75. During the relevant time period, Plaintiff and class members scheduled to work in
27 excess of ten (10) but not longer than twelve (12) hours, and who did not waive their legally-
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1 mandated meal periods by mutual consent, were required to work in excess of ten (10) hours
2 without a mandated second meal period of not less than thirty (30) minutes.

3 76. During the relevant time period, Plaintiff and class members scheduled to work in
4 excess of twelve (12) hours were required to work in excess of ten (10) hours without a mandated
5 second meal period of not less than thirty (30) minutes.

6 77. During the relevant time period, PEP BOYS required Plaintiff and class members
7 to work during meal periods, but failed to compensate Plaintiff and class members for the work
8 they performed during that time.

9 78. PEP BOYS' conduct violates applicable IWC Wage Orders, and California Labor
10 Code sections 226.7(a) and 512(a), and therefore Plaintiff and class members are entitled to
11 recover from PEP BOYS one (1) additional hour of pay at the employee's regular rate of
12 compensation for each work day that the meal period was not provided.

13 79. Plaintiff is informed and believes that Defendants are guilty of oppression, fraud, or
14 malice, thereby warranting an award of punitive damages against Defendants for the sake of
15 example, and to punish Defendants and deter others from engaging in similar misconduct.

16 SEVENTH CAUSE OF ACTION

17 Violation of California Labor Code §§ 221, 223, and 224

18 (Against all Defendants)

19 80. Plaintiff incorporates by reference the allegations set out in paragraphs 1 through
20 79 above, as though fully stated herein.

21 81. California Labor Code section 218 states that nothing in Article 1 of the Labor
22 Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due him
23 [or her] under this article."

24 82. California Labor Code section 221 provides that it shall be unlawful for any
25 employer to collect or receive from an employee any part of wages theretofore paid by said
26 employer to said employee.

1 83. California Labor Code section 223 provides that where any contract requires an
2 employer to maintain a designated wage scale, it shall be unlawful to secretly pay a lower wage
3 while purporting to pay the wage designated by contract.

4 84. California Labor Code section 224 provides that where an employer makes a
5 deduction, other than one required or empowered by state or federal law, not amounting to a rebate
6 or deduction from the standard wage arrived at by collective bargaining, the deduction must be
7 expressly authorized in writing by the employee.

8 85. During the relevant time period, PEP BOYS made both verbal and written
9 representations to the Plaintiff and class members that they would receive compensation on the
10 basis of a pre-designated wage rate.

11 86. Plaintiff and other members of the class relied upon PEP BOYS' representations
12 concerning the agreed-upon wage rates.

13 87. Defendants failed to properly pay regular wages to Plaintiff and class members,
14 pursuant to the mutual agreement between Defendants and Plaintiff and class members, by causing
15 Plaintiff and class members to forfeit earned, vested, but not taken vacation time, and thereby
16 failing to pay Plaintiff and class members all the wages due and owing to them.

17 88. Plaintiff is informed and believes that PEP BOYS improperly deducted amounts
18 from its wages, that it was neither required nor empowered to do by state or federal law, without
19 first obtaining Plaintiff's and class members' express written authorization for such deductions.

20 89. Consequently, Defendants secretly paid Plaintiff and class members a lesser
21 amount of wages than that which was represented on their wage statements.

22 90. PEP BOYS' conduct as alleged herein violates California Labor Code sections 221
23 and 223. Therefore, Plaintiff and class members are entitled to recover all unpaid wages, and such
24 general and special damages as may be appropriate, as well as interest on all due and unpaid
25 wages pursuant to California Labor Code section 218.6, accrued from the date the wages were due
26 and payable, at the rate of interest specified in California Civil Code section 3289(b). Plaintiff and
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1 class members are also entitled to the cost of suit incurred herein; and for such other and further
2 relief as the Court may deem appropriate.

3 91. Plaintiff is informed and believes that Defendants are guilty of oppression, fraud, or
4 malice, thereby warranting an award of punitive damages against Defendants for the sake of
5 example, and to punish Defendants and deter others from engaging in similar misconduct.

6 **EIGHTH CAUSE OF ACTION**

7 **Violation of California Business & Professions Code § 2802**

8 **(Against all Defendants)**

9 92. Plaintiff incorporates by reference the allegations set out in paragraphs 1 through
10 91 above, as though fully stated herein.

11 93. California Labor Code section 2802 provides, in relevant part, as follows:
12 "An employer shall indemnify his or her employee for all necessary expenditures or losses
13 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
14 her obedience to the directions of the employer...."

15 94. Plaintiff is informed and believes that during the course of his employment at PEP
16 BOYS, PEP BOYS implemented an unlawful uniform policy.

17 95. During the course of their employment at PEP BOYS, Plaintiff and class members
18 were instructed and directed to wear certain PEP BOYS selected uniforms in the proper discharge
19 of their duties.

20 96. PEP BOYS required that Plaintiff and class members maintain the uniforms, but
21 failed to provide Plaintiff and class members maintenance allowance or reimbursement for costs
22 incurred in maintenance of the uniforms.

23 97. As a direct result of PEP BOYS' directions, and in conformity with the rules and
24 regulations for proper discharge of their duties, Plaintiff and class members incurred costs and
25 expenses for maintenance of PEP BOYS' uniforms, in an amount according to proof at trial.

26 98. Plaintiff and class members are entitled and hereby request indemnification from
27 PEP BOYS for the cost and expense incurred by them in the maintenance of their uniforms.
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99. Plaintiff and class members further request for payment of all interest due and payable as provided by law, and an award for attorney's fees and costs incurred by Plaintiff and class members pursuant to California Labor Code section 2802(c).

100. Plaintiff is informed and believes that Defendants are guilty of oppression, fraud, or malice, thereby warranting an award of punitive damages against Defendants for the sake of example, and to punish Defendants and deter others from engaging in similar misconduct.

NINTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200, et seq.

(Against all Defendants)

101. Plaintiff incorporates by reference the allegations set out in paragraphs 1 through 100 above, as though fully stated herein.

102. California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law.

103. Defendants have been, and continue to be, unfair, unlawful, and harmful to the Plaintiff, class members, and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

104. During all relevant times mentioned herein, PEP BOYS implemented improper and illegal policies and practices, by among other things, failing to provide meal and rest periods to Plaintiff and class members, improperly deducting amounts from Plaintiff's and class members' wage statements, and failing to comply with other statutory requirements mandated for employers.

This conduct violates California law, and constitutes unlawful business acts and practices in violation of California Business & Professions Code section 17200, *et seq.*

105. As a direct and proximate result of the aforementioned acts, Plaintiff and class members have been personally aggrieved, have suffered loss of money or property, and therefore, pursuant to California Business & Professions Code section 17200, *et seq.*, are entitled for an order of restitution of wages withheld and retained by Defendants during a period commencing four years prior to the filing of this complaint; Injunctive relief requiring Defendants to pay all

1 outstanding wages due to class members; and an award of costs and attorney's fees pursuant to
2 California Code of Civil Procedure section 1021.5 and other applicable law.

3 **REQUEST FOR JURY TRIAL**

4 Plaintiff requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment
7 against Defendant, jointly and severally, as follows:

8 **Class Certification**

- 9 1. That this action be certified as a class action;
10 2. That Plaintiff be appointed as the representative of the Class; and
11 3. That counsel for Plaintiff be appointed as Class counsel.

12 **As to the First Cause of Action**

- 13 4. For general unpaid wages at overtime wage rates and such general and special damages
14 as may be appropriate;
15 5. For punitive and/or exemplary damages according to proof at trial;
16 6. For pre-judgment interest on any unpaid overtime compensation from the date such
17 amounts were due;
18 7. For reasonable attorney's fees and for costs of suit incurred herein pursuant to
19 California Labor Code section 1194(a); and
20 8. For such other and further relief as the Court may deem equitable and appropriate.

21 **As to the Second Cause of Action**

- 22 9. For all actual, consequential and incidental losses and damages, according to proof;
23 10. For statutory penalties pursuant to California Labor Code section 203 for Plaintiff and
24 all other class members who have left Defendants' employ;
25 11. For punitive and/or exemplary damages according to proof at trial;
26 12. For reasonable attorney's fees and for costs of suit incurred herein; and
27 13. For such other and further relief as the Court may deem equitable and appropriate.
28

As to the Third Cause of Action

14. For all actual, consequential and incidental losses and damages, according to proof;
15. For punitive and/or exemplary damages according to proof at trial;
16. For reasonable attorney's fees and for costs of suit incurred herein;
17. For injunctive relief to ensure compliance with this section; and
18. For such other and further relief as the Court may deem equitable, fair, and appropriate.

As to the Fourth Cause of Action

19. For all actual, consequential and incidental losses and damages, according to proof;
20. For statutory penalties pursuant to California Labor Code section 226(e);
21. For punitive and/or exemplary damages according to proof at trial;
22. For reasonable attorney's fees pursuant to California Labor Code section 226(e);
23. For costs of suit incurred herein pursuant to California Labor Code section 226(e);
24. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g); and
25. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

26. For all actual, consequential, and incidental losses and damages, according to proof;
27. For statutory wage penalties pursuant to California Labor Code section 226.7(b);
28. For punitive and/or exemplary damages according to proof at trial;
29. For reasonable attorney's fees and for costs of suit incurred herein; and
30. For such other and further relief as the Court may deem appropriate.

As to the Sixth Cause of Action

31. For all actual, consequential, and incidental losses and damages, according to proof;
32. For statutory wage penalties pursuant to California Labor Code section 226.7(b);
33. For punitive and/or exemplary damages according to proof at trial;
34. For reasonable attorney's fees and for costs of suit incurred herein;
35. For costs of suit incurred herein; and

1 36. For such other and further relief as the Court may deem appropriate.

2 As to the Seventh Cause of Action

3 37. For all actual, consequential, and incidental losses and damages, according to proof;

4 38. For punitive and/or exemplary damages according to proof at trial;

5 39. For reasonable attorney's fees and for costs of suit incurred herein;

6 40. For costs of suit incurred herein; and

7 41. For such other and further relief as the Court may deem appropriate.

8 As to the Eight Cause of Action

9 42. For all actual, consequential, and incidental losses and damages, according to proof;

10 43. For punitive and/or exemplary damages according to proof at trial;

11 44. For interest at the legal rate, accruing from the date on which Plaintiff and class
12 members each incurred the necessary expenditure;

13 45. For reasonable attorney's fees and for costs of suit incurred herein;

14 46. For costs of suit incurred herein; and

15 47. For such other and further relief as the Court may deem appropriate.

16 As to the Ninth Cause of Action

17 48. For disgorgement of any and all "unpaid wages" and incidental losses, according to
18 proof;

19 49. For restitution of "unpaid wages" to all class members and prejudgment interest from
20 the day such amounts were due and payable;

21 50. For the appointment of a receiver to receive, manage and distribute any and all funds
22 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
23 result of violations of California Business & Professions Code section 17200, *et seq.*;

24 51. For reasonable attorney's fees that Plaintiffs and class members are entitled to recover
25 under California Code of Civil Procedure section 1021.5;

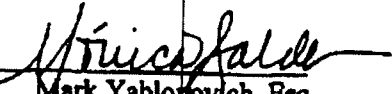
26 52. For costs of suit incurred herein;

1 53. For injunctive relief to ensure compliance with this section, pursuant to California
2 Business & Professions Code section 17200, *et seq.*; and

3 54. For such other and further relief as the Court may deem equitable and appropriate.
4

5 Dated: January 30, 2007

Respectfully submitted,
Initiative Legal Group LLP

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7 By: 
8 Mark Yablonyich, Esq.
9 Marc Primo, Esq.
10 Mónica Balderrama, Esq.
11 Talin Haroutunian, Esq.
12 Attorneys for Plaintiff/Class Members
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